

1887-001
Lee Co.

Chancery Causes: Admr. of H. L. Greer vs. P. A. Howard &c

Flanery, Ewan, Award, Simerall, Flanery, Sewell

CA - Debt
T. Property

To the Honorable H. S. H. Morrison Judge of
the Circuit Court of Lee County, Virginia.
Your Orator, A. D. Flanagan, Sheriff of Lee
County, and administrator of A. L. Greer
decd, humbly complaining, sheweth to your
honor.

That P. A. Howard of Montgomery County Kentucky
became indebted to A. L. Greer, in his life time, for
the sum of seven thousand dollars, \$7000⁰⁰, with
interest thereon at the rate of ten per centum per
annum, and also for his attorney's fees for collecting
the same. Said sum is evidenced by note made by
P. A. Howard to A. L. Greer decd, dated July 31st
1873, negotiable and payable eight months after
date at the ^{first} National Bank of Covington Kentucky,
with interest as aforesaid, from date, until paid.
This Contract was made in the State of Kentucky by
residents thereof, and to be performed therein; and at
the date of said Contract, the law then in force in
said state allowed ten per cent interest to be stipulated
for, and the same will be sought for in this suit,
for the rule governing the rate of interest in said
Contract, as your honor is fully aware, is the *lex*
loci contractus. A copy of said note is in a Certified
copy of the records of a similar case from the Chancery
Court of Blaine County Tennessee, which is herewith
filed as an exhibit, marked (A) in this bill, and prayed
to be taken as proof thereof. Other references will

Hereafter be made to said copy of the record of said cause, and will be designated by number of page, or pages, on which they will be found. A copy of said note is on page 11 in said exhibit.

Your orator, further shows your Honor, that on the same day that said note was executed, the said P. H. Howard was seized to him and his heirs in fee-simple of an undivided one half interest in a certain tract or parcel of land, described as follows, to wit: All of a certain undivided one half ^{trust in} certain tract or parcel of land lying in Claiborne County Tennessee, and Lee County Virginia, and bounded as follows: "Beginning at a poplar tree (now down) (one of the original corners of the eleven hundred and fifty-five (1155) acre tract) nearly opposite flag hollow, passing the mouth of flag hollow southwardly to the closing line of the John Jones 3000 acre grant, and with said line eastwardly to the ^{Northeast} corner of the Hugh Graham lands (now William Patterson's); thence North to the top of Poor Valley Ridge; thence eastwardly along the top of said ridge to Robert Crockett's (now Dr Morris's) line, and thence with the original line of the John Jones 1155 acre tract to the beginning, containing by estimation eight hundred (800) acres. Said undivided one half interest in said lands is the same conveyed by deed dated April the 12th, 1873 by John G. Newlee to P. H. Howard." See

order to secure the payment of said debt, the said P. H. Howard executed a deed of mortgage to said A. L. Greer, conveying to him and his heirs and assigns, his undivided one half interest in said described tract of land, reserving the ~~ceding~~ machine and fixtures with perpetual privilege of the water.

Said mortgage deed contains the usual covenants of good title and warranty, but provides that if the above described note should be paid at maturity, then said mortgage deed should be void.

Said Mortgage deed contains the following clause: "It is also agreed that if said Greer has to resort to law for the collection of said note, said Howard agrees that a reasonable attorney's fee shall be taxed as costs, holding said Greer free from expenses for collecting the same."

Said mortgage deed was duly executed, acknowledged, and recorded in the clerk's offices, both in Claiborne County Tennessee, and Lee County Virginia. A copy of said mortgage deed is on pages 12 to 16 inclusive in exhibit (A) herewith filed.

Much the greater portion of said described tract of land lies in Claiborne County Tennessee, which portion contains by recent survey 699 acres, and said mortgaged undivided one half interest is partly contained in said 699 acres in Tennessee.

At the maturity of said note, default was made in the ^{Collection} payment of same, and no actions were taken for the ^{thereof} thereof for nearly five years thereafter, in the meantime, said Howard remained in possession of said land.

The said A. L. Green, on the 20th of February 1878 filed his bill in the Chancery Court of Claiborne County Tennessee, for the purpose of foreclosing said mortgage deed on that portion of said land lying in Tennessee, and for the purpose of collecting said debt. Said bill is on pages 2 to 9 inclusive in exhibit A herewith filed.

At the October term, on the 16th day of Oct, 1878, a decree was rendered against the said Howard, for the amount of said note \$7000⁰⁰ with interest thereon, at the rate of ten per centum per annum, which amounted to \$10645 ⁸³/₁₀₀ and for the further sum of \$343 ⁶⁰/₁₀₀, being the amount said Green paid on said land as taxes and cost of said suit in Tennessee; and it was further decreed that said land be sold to satisfy the same. Said decree is on pages from 17 to 22 inclusive in exhibit B filed herewith.

Said land was accordingly sold on the 21st day of Feb, 1878 by the Clerk & Master for the sum of two thousand dollars, and said sale reported to the April term, and duly confirmed. After deducting the amount of taxes and costs \$343 ⁶⁰/₁₀₀ from the purchase price of said land \$2000⁰⁰, there remained \$1656 ⁴⁰/₁₀₀, which was adjudged and decreed to stand and be

applied as a credit on the said sum of $\$10645\frac{83}{100}$ which was decreed to be paid to said Greer at that term of said court, Oct, 16th 1878. This was accordingly done, which left $\$8989\frac{43}{100}$ still to be paid on said debt under said decree. This sum with interest thereon at the rate of ten per centum per annum from the date of said decree still remains due and unpaid, which would up to the present, amount to about $\$16255\frac{98}{100}$. A copy of said report of said sale is on pages from 21 to 29 inclusive in exhibit (A) herewith filed.

Since the rendition of the decree aforesaid, sometime in the year 1883, the said H. S. Greer departed this life, intestate leaving the following persons his heirs at law, to wit: James H. Greer, John W. Greer, Emma Greer, who intermarried with a man by the name of John B. Ewan, Laura Greer, who intermarried with a man by the name of W. F. Simrall, and — Greer, who intermarried with a man by the name of — Hoord, and since her marriage has died leaving two children her heirs at law, to wit: Anna Hoord and Birdie Hoord, both of whom are infants under the age of twenty one years, and all of them, together with P. H. Howard one non-resident of this Commonwealth.

The said Greer dec'd, has a duly appointed administrator in the state of Kentucky. At a County Court began and held for for See County Jan,

the 18th 1887, on motion, the said Greis estate was committed to your orator, R. D. Flanory, Sheriff of said County, as his administrator in said County of Virginia. See exhibit-(B).

Your Orator, will now state that 101 acres of said described tract of land, as ascertained by a recent survey, lies in this County about 35 miles West from Jonesville; Said Howard was the legal owner of an undivided one half interest in this 101 acres, as he was the legal owner of an undivided one half interest in the whole 800 acre tract of land. And as the said Howard mortgaged to said Greer his undivided one half interest in the whole tract of 800 acres his undivided one half interest in the ^{and one} hundred acres in Lee County was also mortgaged to said Greer. This will appear by copy of said mortgage deed in exhibit-A, on pages 12 to 16 here with filed.

Said land in this County is chiefly mountain and ridge land, and has never been cultivated, nor enclosed by any fence. The rental value of said undivided interest in the ^{and one} hundred acres of land in the County, would be merely nominal, and would not in its present condition, nor if even in a state of cultivation, bring sufficient rent, within five years, to pay the large sum indicated above.

Therefore, to have said mortgage on said undivided one half interest in said ^{and one} hundred acres of land in said County of ~~Be~~ and State of Virginia, foreclosed, and the same sold to pay said debt, is the object of this bill.

Intending, consideration whereof, and forasmuch as your orator is remiss in the premises by the strict rules of Common Law, and cannot have adequate relief, except in a Court of Equity, where matters of this kind are properly cognizable and relievable.

To the end, therefore, that justice may be done in the premises, your orator prays that the said P. H. Haward, James F. Greer, John W. Greer, John B. Ewan & Anna his wife, Wm. F. Simrall & Laura his wife, Birdie Howard and Anna Howard, be made parties defendant to this bill, and be required severally to answer the same on oath, as fully and particularly as if each of them had been thereto specially interrogated; that said Haward be decreed to pay said debt, by a short day, to be appointed by this honorable Court, and in default of such payment, the said P. H. Haward, and all persons claiming under him may be forever barred and foreclosed of and from all right of redemption of, in and to said mortgaged premises, and the same sold to pay said debt; that publication be made for the purpose of bringing said defendants before this Court; that a guardian ad litem

be appointed to defend the infants Birdie
and Anna Howard in this suit, and that
your orator may have all such further and
general relief in the premises as the nature of
his case may require, and is agreeable to
equity and good conscience. And may a
summons issue against the said defendants
herinbefore named etc. And your orator
will ever pray etc.

B. H. Sewell,
p. q.

C 6.65
 P. 5.00
 L.A. 5.00
 X. 15.00
 Estimate 5.00
26.68
 Copy 5.50 To Clerk of
 543.1

D. Flanory, sheriff & adu. for the

Bill in Chey.

Forward et als.

Spa issued

Sub to master

filed + Court

Order Pub. Court & Divi.

set for hearing

decrees Decree for

and continued

11 Aug Decree Final

To the Hon S.D.K. Merison Judge of the
Circuit Court of Lee County Virginia:

The answer of Henry J. Morgan guardian
ad litem for Birdie Howard and Annie Howard the
infant defendants to a bill filed in this honorable
court against them & others by Reese B. Flannery admr.
of A.L. Gasser died:

Respondent on behalf of his said Wards says that
they are young and of tender years, and being
such are the peculiar wards of courts of equity
their interest in this cause is therefore committed
with all confidence to your honors care & ^{watchful} supervision

Respondent says he knows nothing personally of the
various matters and things set out and referred to in
the plaintiffs bill, nor has his said wards given him
any information touching the matter or merits thereof. &
this being respondents condition he is not prepared
to either admit or deny any of the allegations thereof.

From the statements of the plaintiffs bill it would
appear that there is due to the estate of A.L. Gasser and
the grand father of Respondents wards a large sum
of money from P.H. Howard, and that the main chance
of collecting that money is by selling the land sought to
be reached by the bill, and if the money thus due can
be thus realized it would seem to respondent that
his wards interest would be promoted by the sale of
the land as prayed for by the plaintiff in his bill:

Respondent having now answered as fully as deemed
material prays that his said wards be discharged with their
costs.

Henry J. Morgan guardian
ad litem for said infants

Henry J. Morgan guardian
ad litem for Birdie Annie Bond

A. No. 3 Answer

R. D. Flannery admt.

Filed Febry Rules

1887.

J. A. Hyatt ce

R. D. Flannery Sheriff & Asswr., for the Plff
vs.
P. A. Howard et al, Dfts. } the Chcy.

This cause came on again this the 3^d day of Sept, 1887, & be hood upon the papers formerly read, the report of B. H. Sewell Court, this day filed, in open Court, with deed, accompanying said report, and was argued by Counsel. On consideration whereof, said deed and report being received to, they are each confirmed. And it is adjudged ordered and decreed, that Court, Sewell, surrender to C. H. Rogers and his sureties the bond executed by them for the purchase price of said land. And it is further ordered and decreed that James A. Guier, John W. Guier, Anna Ewan, Laura Simms, Birdie & Anna Avond, pay to Court, Sewell five dollars for making said deed. And the Clerk of this Court will deliver said deed to the Clerk of the County Court for recordation, and there

A. D. Flannery, ^{Chgo} ~~W. D. Flannery~~
of Decree, no 3

P. A. Hawes & Co.,
Entered on page 75
C. D. Book No. 3.
J. A. & J. G. Hall
Co.

Enter this
~~W. D. Flannery~~
Sept 3rd 1887

being nothing further to be done
in said Decree, it is ordered
from the Court.

A. D. Flanary Sheriff Adm^r. for etc. Plff.

vs.

J. A. Forward et al Dfts. J. du Chery

This cause came on this day to be again heard upon the papers formerly read, the report of B. H. Sewell, special Commissioner, filed on the 19th day of August 1887, and was argued by Counsel.

And it appearing to the Court, that said report has been filed for more than ten days, and ^{that} no exceptions have been taken thereto, said report and sale made by said Commissioner, are each confirmed. And it appearing to the Court, that said land was purchased by C. H. Rogers, as agent and attorney for the heirs of A. L. Greer, dec^d, the Mortgagee and Judgement Creditor, and said heirs being willing to accept said land at the price bid by their said agent and attorney, and have executed a receipt to the said B. H. Sewell, Com^r, for the sum of \$928 ⁸²/₁₀₀, the net proceeds of said sale. On consideration whereof it is adjudged

does, ordered and decreed, that said
sum of \$928 $\frac{82}{100}$, stand and be
applied as a credit upon the
decree in favor of R. D. Flanory,
Sheriff & Adm^r, for etc, vs P. A. Howard
as of the 21st day of June 1887.
And it further appearing to
the Court, that the heirs of said
A. L. Greer dec^d, the purchasers
of said land by their agent and
Attorney, are entitled to a conveyance
of said land. It is therefore, ~~found~~
adjudged, ordered, and decreed, that
B. H. Sewell, who is appointed a
Commissioner for the purpose
to convey by deed with special
warranty, the one undivided
moiety of the one hundred and
one acres of land, in the bill
and proceedings mentioned to James
A. Greer, John W. Greer, Emma Ewan
wife of John B. Ewan, Laura Simrall,
wife of W. F. Simrall, Birdie Avond,
and Anna Avond, heirs at
law, of A. L. Greer dec^d. Said
Commissioner will report his
action to a future day of this

Term of this Court.

A.D. Flannery, Sh. Thomsen etc.

vs f Decree, 2.

P.A. Howard et al.

Entered on page 66

C.O. Book No. 3.

J. A. Hyatt
co.

Enter this.

~~per~~
Sep 2nd 1887

R. D. Flanary, Adm^r, Plff., } In Chy.
v
P. A. Howard et al, Dfts. }

This cause came on this day to be heard, on the bill of the plaintiff, ^{order of public sale, also being duly published against him pending this suit} and exhibits therewith, taken for confessed by the adult defendants, and the answer of the infant defendants, by H. J. Morgan, their guardian ad litem, and was argued by counsel. On consideration whereof, it is adjudged, ordered and decreed, that the plaintiff recover against the defendant, P. A. Howard, the sum of \$8989 $\frac{43}{100}$, with interest on \$7000⁰⁰., part thereof at the rate of ten per centum per annum from the 16th of October 1878 till paid, and the cost of this suit. And it appearing to the Court, that said sum operates as a lien created by mortgage referred to in the bill upon the one undivided moiety of the one hundred and one acres of land lying in Virginia, it is, therefore, further adjudged, ordered and decreed, that unless said sum of money above decreed the plaintiff, be paid to him by the defendant Howard, or some one for him, within thirty days from the rising of this Court, then to the one undivided moiety of the tract of land

before mentioned, the said P. A. Howard, his heirs, and all persons claiming under him, be from thenceforth forever barred and foreclosed of and from all equity of redemption therein, and that the same be sold, at public auction to the highest bidder, at the front door of the Court House of Lee County, on some Court day, after the same shall have been advertised for thirty days prior thereto, showing time, terms, and place of sale. At said sale so much cash as will pay the Cost of suit and sale will be required in hand, and as to the residue six, twelve, and eighteen months time will be given in equal installments without interest from day of sale, and the purchaser be required to give bond with approved security for the deferred payments. And B. H. Swell is appointed a special Commissioner to execute this decree, who before doing so, is required to execute bond before the Clerk of this Court with good security in the penalty of one thousand dollars with condition to faithfully account for all money he may receive in this cause. And he will report his actions to this Court, and the Cause is continued.

R. D. Flannery, Sheriff, H. M. & Co.,
vs E. Deere, No 1

P. A. Howard et al.
Entered page 4

Enter this,
29 March 1887
H. A. K. M.

Virginia

Lee County to wit.

This day, B. H. Sewell personally, appeared before me and made oath in due form that P. H. Howard, James H. Greer, John W. Greer, John B. Eason & Emma his wife, Wm. H. Simrall & Laura his wife Birdie Arard, & Anna Howard Defendants in a Chancery Suit this day instituted in Lee Circuit Court of Lee County by R. D. Flannery Sheriff & Admors vs P. H. Howard et al are non residents of the State of Virginia Given under my hand this 18th January 1887.

J. A. L. Hyatt & Co

R. D. Flannery
Sheriff & County
vs $\frac{3}{4}$ Affidavit
B. H. Howard

Filed Jan 1878
J. S. Hyatt & Co

Know all men by these presents that we
B. H. Sewell & Henry J. Morgan are held and
firmly bound unto the Commonwealth of
Virginia, in the just and full sum of
One thousand dollars, for the payment
thereof well and truly to be made unto the
said Commonwealth we bind, ourselves heirs &c
firmly by these presents. And we hereby waive
the benefit of our homestead exemptions as
to this bond. Witness our hands & seals, this the
12th day of May 1887.

The condition of the above obligation is such
that whereas the above bound B. H. Sewell
was, by a decree of the circuit Court of Lee
County Va., rendered at the March term 1887, in
the Chancery cause of R. D. Flanery Adm'r &c
against - P. A. Howard et als, appointed a spe-
- cial Commissioner for the purpose of selling certain
lands in said decree mentioned. Now if the
said Sewell shall well and truly account
for and pay over the proceeds of said sale as
the Court may direct, then the above obliga-
- tion to be void, Otherwise to remain in full
force and virtue.

B. H. Sewell *Seal*

Henry J. Morgan *Seal*

R. D. Flanery Adm^r for
re
of Coins Band
P. A. Howard et als.

R. D. Flauary Sheriff Adm^r for etc Off
vs
P. A. Howard et al. D^{ft} J. Gu Chex.

To the Hon. H. S. K. Monson, Judge of
the Circuit Court of Lee County
Virginia.

The undersigned, who was
appointed a special Commissioner,
for the purpose, by a decree rendered
and pronounced in the above styled
cause, on the 29th day of March
1887, begs leave to report, that pur-
suant to the terms of said decree,
after fully advertising, the time,
terms, and place of sale, he on
the 21st day of June 1887, that
being Court day, offered for sale,
the one undivided moiety of that
part of the tract of land in the
bill and proceedings mentioned,
lying in the County of Lee and State
of Virginia. And C. H. Rogers,
being the highest and best bidder,
said land was knocked off to him,
at the price of one thousand
dollars. Said Rogers paid
down to your Commissioner,
\$71 $\frac{18}{100}$, cost of suit and Commissions

of sale, and executed his bond for \$928 $\frac{82}{100}$, bearing interest from date, and payable in three equal installments, due respectively, in six, twelve, and eighteen months time, with C. I. Duncan and D. C. Sewell as his sureties. Said Rogers is agent and attorney for the heirs of A. R. Greer deceased, and bid said land off for them. Said heirs have executed to your Commissioner, their receipt for the sum of \$928 $\frac{82}{100}$, the net proceeds of said sale, they accepting said land for said sum. Said receipt is here filed as part of this report marked A. 1. Your Commissioner has disbursed the sum paid down to him as follows: To J. A. S. Hyatt Clerk \$7 $\frac{74}{100}$, to Jeff L. Duff, Editor of the Virginia Herald \$5.00 for order of publication, to H. J. Morgan, Esq. \$5.00, receipts for which are here filed marked A. 2. To C. H. Rogers for Clerk of Claiborne County Tennessee \$3.50, for copying record, his receipt for which is here filed marked A. 3. Your Commissioner retained \$15.00.

his attorney fee, and \$29⁰⁰, his
commission, which leaves
in his hands of Estimated Cost,
\$3, $\frac{94}{100}$. Your Commissioner believes
said sale to be a good one, and
recommends its confirmation;
That a deed be made to the heirs
of A. L. Grew dec'd, and that the
bond executed by C. H. Rogers
and his sureties be delivered up
to them, which will dispose
of the whole case, and it can
be stricken from the docket.
Respectfully submitted
E. N. Jewell
Commissioner,

R. D. Flannery Sheriff Mendocino

vs } Commissioner's Report.

J. A. Howard et al.

Filed Aug. 19th 1882

J. A. Hyatt & Co.

R. D. Tlaway Sheriff & Mr. for etc. Off. }
vs. } Gagey-
P. A. Howard et al. Off.

The undersigned Commissioner,
begs leave to report, that pursuant
to a decree rendered and pronounced,
on the 2^d day of September 1887,
in the above styled cause, he
has made a deed, conveying to
James A. Greer, John W. Greer,
Emma Ewan, Laura Simrall
Birdie Howard and Anna Howard,
the land in the bill and proceedings
mentioned heretofore sold by
him, which deed is here filed,
marked, O, as part of this report.
There is nothing further to be done
in this cause, and it may be
stricken from the docket.

Respectfully Submitted
B. H. Sewell Comr.

Sept. 3^d 1887.

Transcript of the Record in the case
of A. L. Greer vs. J. A. Howard in the
Chancery Court at Tazewell, Tenn.

Bond for Costs

Know all men by these
presents that we, Alexander L. Greer
and Jesse D. Rogers are held and firmly
bound unto J. A. Howard in the first
and full sum of Two Hundred and Fifty
Dollars for the payment of which, well and
truly to be made we and each of us bind
our selves, our heirs, executors and adminis-
trators, jointly and severally, firmly by these
presents. Signed with our hands and
dated this 20th day of February 1878.

The condition of the above obligation is
such, that whereas the above bound Alex-
ander L. Greer hath the day of the date
hereof filed his certain bill of complaint
in the Chancery Court at Tazewell against
the above named J. A. Howard as defend-
ant,

Now, if the said complainant
A. L. Greer shall well and truly pros-

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scute said suit or bill with effect, or
pay such costs and damages as may
be awarded against him by the Court
having cognizance thereof, then the above
obligation to be void; otherwise to remain
in full force and effect.

Alexander L. Greer
by J. H. Rogers solr.
J. H. Rogers.

Endorsed:

"Filed 20th day of Feby. 1878."

Original Bill.

To the Hon W. C. Smith, Chan-
cellor &c, now holding the Chancery Court
at Tazewell for Claiborne County, Tennessee.
The bill of complaint of Alexander
L. Greer a citizen of Kenton County Kentucky
respectfully represents unto your honor
that one J. A. Howard of the county of Mont-
gomery and State of Kentucky is indebted
to him in the sum of \$7000.00 and interest
thereon at the rate of ten per cent per annum,
and also his attorneys fees for collecting the

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same. Said sum is evidenced by note made by said P.A. Howard to complainant July 31, 1873 and due eight months from the date thereof and bearing interest at the rate of ten percent per annum from date. Complainant states that there now remains due him on said note over \$1000.00 and though he has frequently importuned and urged said Howard to pay the same yet no part thereof has been paid. Said note will be produced as evidence in this cause.

Complainant further shows your honor that on the same day said note was executed, the said P.A. Howard, for the purpose of securing and making certain the payment of said note, executed to complainant a mortgage of the following tract of land, to wit: "All of a certain one undivided half interest of a certain tract or parcel of land, lying in Claiborne county Tennessee, and Lee county Virginia, and bounded as follows:

"Beginning at a Poplar tree (now down)

one of the original corners of the 1155 acre tract, nearly opposite flag hollow passing the mouth of the flag hollow southwardly to the closing line of the John Jones 3000 acre grant, and with said line Eastwardly to the north east corner of the Hugh Graham lands (now William H. Patterson); thence north to the top of the Poor valley ridge; thence eastwardly along the top of said ridge to Robert Crockett's (now Dr Morrison's) line; and thence with the original line of the John Jones 1155 acre tract to the beginning, containing by estimation 800 acres." Said undivided one half interest in said property was the same conveyed by deed dated April 12, 1873 by John G. Newlee to said P. A. Howard.

Said mortgage deed contains the usual covenants of good title and warranty; but provided that if the note above described should be paid, then the said mortgage deed should be void. And said mortgage also contains

the following clause: "It is also further agreed that if said Greer has to resort to law for the collection of said note said Howard agrees that a reasonable attorney's fee shall be taxed as costs, holding said Greer free from expense for collecting the same."

Said instrument was duly acknowledged by said Howard before Eli Goin the County Court Clerk of Claiborne County on the 16th day of August 1873, and was registered in the Register's office of said county on said last named day in Book 42 page 24, and the same will be produced as evidence in this cause. The deed was also duly recorded in the deed book No. 14 of Lee County, Va.

Much the greater portion of said land lies in said Claiborne county, Tenn, and only a small portion in Lee County, Virginia; and the same has not been partitioned between said P. A. Howard and the heirs at law of John G. Newlin, decd,

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who own the other undivided one-half of said land. Said P. A. Howard has been permitted to remain in possession of said property by complainant and now complainant brings this his bill for the foreclosing said mortgage and having said property sold for the purpose of satisfying his said debt.

The premises considered complainant prays that said P. A. Howard be made a party defendant to this bill and that he be required to answer, but an answer on oath is waived; that publication be made for the purpose of bringing him before the Court; that said property be sold for the purpose of foreclosing complainant's mortgage lien on the same, and for the purpose of paying complainant's note, that the amount of the same be ascertained and that he have a decree therefor; that if the Court has not jurisdiction to sell that portion of said land lying in Va. that the portion lying in Claiborne County be sold, that the sale be made free from and in bar of the

equity of redemption, upon such credit
as your honor shall direct; that com-
plainant has a decree against said
Howard for the amount of his necessary
solicitor's fees, collecting said note ac-
cording to the terms of said mortgage deed.

Complainant has paid the taxes
on said land for some three or four
years, this he was forced to do to pre-
vent the same from passing to other
parties as the lands were sold for tax-
es assessed against the same and com-
plainant was forced to pay the same by
redeeming from the purchaser which
he did to protect himself and to keep
the property free from the encumbrance
of tax sales; the taxes and expenses
incident to paying the same thus paid
by complainant amount to at least
\$200.00 and he prays that the correct
amount of the same be ascertained
and that he has a decree therefor
against the defendant.

Complainant prays for all neces-

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sary references and accounts. We
prayer for general relief and for pub-
lication.

Jesse T. Rogers, Sol.

State of Tennessee)

Claiborne County)

Personally came before
the undersigned authority

Jesse T. Rogers, Complainant's Solicitor, and made
oath in due form of law that according to the
best of his information and belief the defendant,
P. A. Howard, is a non-resident of the State of
Tennessee.

Jesse T. Rogers

Sworn to and subscribed
before me this Feb. 20th 1878

J. C. Rogers, C. M.

Endorsed:

Filed Feb. 20, 1878. J. C. Rogers, C. M.

Entries on Rule Docket.

A. L. Greer

vs

Bill filed Feb.

P. A. Howard

20, 1878.

Jesse T. Rogers Solr

for Compt.

Prosecution bond filed Feb. 18, 1878, in
the penalty of \$2500.00, with J. C. F.
Rogers, security on the same.

Order of Publication.

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In this cause it appears from com-
plainant's bill that the defendant P. A.
Howard, is a non-resident of the state
of Tennessee; it is ordered by the Clerk
and Master that said defendant be re-
quired to appear before the Chancery Court
at Tazewell on the 2nd Monday of April
next and make defense to said bill, or
the same will be taken for confessed and
the cause set for hearing ex parte. This
notice will be published for four con-
secutive weeks in the Dandridge Watch-
man, a weekly newspaper published
in Dandridge, Tenn. This Feb 20, 1878.

J. C. Rogers, C. & M.

A true copy of the order.

J. C. Rogers, Solr.

Pro Confesso.

In this cause it appears that the

10.

defendant P. H. Howard was brought regularly before the Court by publication duly made at the last term, and that he appeared and obtained two months time in which to answer, and said time having expired and the said defendant having failed to answer or make other defense to the present time, it is ordered by the Clerk and Master that judgment pro confesso be and the same is hereby taken and entered in this cause against him and the same set for hearing ex parte.

This July 1, 1878.

J. C. Rogers C. & M.

Caption April Term, 1878.

11 Be it remembered that at a
Chancery Court begun and held for
the County of Claiborne at the Court
house in the town of Tazewell, on
the Second Monday of April, 1886, the
same being the 8th day of said month,
present and presiding the Hon. H.C. Smith,
Chancellor &c. the following proceedings were
had, to wit:

A.R. Greer
vs.
P.A. Howard } Order
In this ^{upon application of} cause, ^{the} ^{he} respondent is allowed
two months time in which to file his
answer.

Note filed as Evidence.

" Covington, Ky., July 31st 1873.

\$7000.00 - Eight months after date I promise
to pay to the order of Alexander D. Greer
Seven Thousand Dollars, negotiable and
payable at the First ~~National~~ Bank of

Corrington, Ky, with interest at the rate of ten percent. per annum from date, until paid. Value recd.

P. A. Howard."

Mortgage Deed.

"Know all men by these presents, that Presly W. Howard of Montgomery County, state of Kentucky for and in consideration of Seven Thousand Dollars to him paid by Alexander R. Greer, of City of Corrington County of Kenton and state of Kentucky, the receipt whereof is hereby acknowledged, do hereby bargain sell and convey to the said Greer, his heirs and assigns forever, the following described real estate, to wit:

All of a certain one undivided half interest of a certain tract or parcel of land lying and being in Claiborne county and state of Tennessee and county of Lee and state of Virginia and bounded as follows: 'Beginning at a poplar tree (now down) (one of the original corners of the eleven fifty five (1155) acre tract) near,

opposite flag hollow passing the mouth
of the flag hollow southwardly, to the closing
line of the John Jones 3000 acre grant, and
with said line Eastwardly, to the North east
corner of the Hugh Graham lands (now William
H. Patterson); thence North to the top of the
Poor Valley ridge; thence Eastwardly, along the
top of said ridge to Robt Crockett's (now Dr.
Morison's) line; and thence with the origi-
nal lines of the John Jones 1105 acre tract to
the beginning, containing by estimation
eight hundred (800) acres, reserving the
Carding machine and fixtures with per-
petual privilege of the water, also two acres
formerly sold to Dr. Morison, being the same
property conveyed by John G. Newlee by deed
bearing date 12 day of April 1873 and recorded
in book 42 page 366 in Claiborne county, state
of Tennessee, together with all the privileges
and appurtenances to the same belonging,
to have and to hold the same to the said
A. F. Greer, his heirs and assigns for-
ever, the grantor, his heirs, executors and
administrators hereby covenanting with the

granted, his heirs and assigns, that the title so conveyed is clear, free and unincumbered and that he will warrant and defend the same against all legal claims whatsoever.

Provided, always, that if the said P. W. Howard shall cause to be paid unto the said A. F. Greer a certain note, bearing even date herewith, for seven thousand dollars (\$7000.00) due and payable eight months after date to the order of the said A. F. Greer with ten percent per annum interest from date until paid, said note payable at the First National Bank of Covington Ky. It is also further agreed that if said Greer has to resort to law for the collection of said note, said Howard agrees that a reasonable attorneys fee shall be taxed as costs, holding said Greer free from expense for collecting the same, then these presents shall be void.

In witness whereof the said P. W. Howard has hereunto set his hand and seal, this 31 day of July in the

year 1873 -

Test:

P. H. Howard "

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"State of Tennessee

Clairborne County

} ss. I Eli Goins, Clerk
of the County Court

within and for the county aforesaid, do
hereby certify that P. H. Howard, the
within named bargainer, with whom
I am personally acquainted appears
and acknowledges that he executes the
annexed instrument for the purpose
therein contained.

Witness my hand and official seal
at office in Tazewell, this 16th day of
August A.D. 1873 -

(L. S.)

Eli Goins Clerk County Court "

Recorded in deed book page 212

"This deed was filed in my office the
16 day of August A.D. 1873 at 9 o'clock
and registered same day in book 42
page 24 - Note Book 2 page 66.

J. B. Musmus, D. Registrar for
Clairborne County "

16.

"Virginia Lee County Court,

Clerks office the 18 day of Feb. 1870.

The foregoing deed from P. H. Howard of Montgomery County, State of Kentucky of the one part to Alexander R. Greer of the city of Cornington County of Kenton of the state aforesaid of the other part is admitted to ~~for~~ record upon the Certificate of Eli Goin, Clerk of the County Court of Calhoun County state of Tennessee. Teste - James M. Orr, Clerk.

P. H. Fulkerson's Deposition.

Filed Oct. 14, 1878.

Ques.

" State whether or not you are a practicing Solicitor of this Court and what would be a reasonable fee to Compt's Solicitor for his services in this case?

Ans. I have examined the papers on file in the case, and I consider that 2 1/2 percent would be a reasonable fee in this case, considering

the amount involved. I am a
practicing Solicitor of this Court.

J. G. Fulkerson

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October term 1878.

Be it remembered that at a Chancery
Court begun and held for the County of Claiborne
at the Court house in Natchez, on the Second
Monday of October 1878, the same being the
14th day of said month, present and pre-
siding the Hon. H. C. Smith Chancellor &c.,
when the following proceedings were had
to wit:

Alexander L. Greer

vs.

P. A. Howard

Decree

This cause came on to
be heard on this the 16th day of October 1878,
before Chancellor Smith, upon the bill, the depo-
sition of the witness J. G. Fulkerson, the mort-
gage deed named in the bill, executed by
defendant to complainant July 31, 1873, upon
the note described in the bill, all of which

were read in evidence, and upon the judgment pro confesso heretofore taken before the Master at rules, and was argued by counsel, upon consideration whereof it appears to the Court that the defendant is indebted to complainant in the sum of \$7000.00 and interest thereon at the rate of ten per cent. per annum from the 31st day of July 1873, on account of the note mentioned in the bill, and read in evidence in this cause, ~~which~~ interest is the further sum of \$3645.83 making principal and interest to this date the sum of (\$10645.83.) Ten Thousand and Six Hundred and Forty Five $83\frac{1}{100}$ Dollars.

And it appearing further to the Court that at the time of the execution of said note, deft. agreed "that in the event complainant should have to resort to law for the collection of said note, that he deft. would pay complainant's attorney's fee and hold complainant free from expense in collecting said note." And the Court being of opinion that defendant

Howard is liable to complainant for his solicitors fees in bringing and prosecuting this suit; and it appearing to the Court from the evidence that such Attorneys fee in this case should be two and one-half percent of the above sum of \$10645.83, being the sum of \$266.15.

It is therefore ordered and decreed ~~by~~ that the Complainant recover of the defendant the said sum of \$10645.83 the amount due on said note and the sum of \$266.15 Complainants Attorneys fees in this case, and also the Costs of this cause for all of which Execution may issue.

But it further appearing to the Court that said complainant for the purpose of satisfying said sums is entitled to have the land named in the bill sold for the purpose of foreclosing his mortgage resting thereon.

Said land so mortgaged is described as follows: "All of of a certain one undi-

videt half interest of a certain tract or parcel of land, lying in Claiborne County Tennessee and Lee County Va. and bounded as follows:

Beginning at a Poplar tree (now down) one of the original corners of the 1155 acre tract, nearly opposite flag hollow, passing the mouth of flag hollow southwardly to the closing line of the John Jones 3000 acre grant and with said line Eastwardly to the North-East corner of Hugh Graham's land (now William H. Patterson's); thence North to the top of the Poor Valley ridge; thence Eastwardly along the top of said ridge to Robert Crockett's (now Dr. Morrison's) line, and thence with the original line of the John Jones 1155 acre tract to the beginning, containing by estimation 800 acres."

It is therefore ordered, and adjudged and decreed by the Court, that the Clerk and Master of this Court as

Special Commissioner, sell said interest in said land, or in that portion of the same lying in the State of Tennessee, after advertising as required by law in execution sales ~~of realty~~ (except no newspaper advertisement will be required there being none published in Claiborne County.) Said sale to take place at the Court house door in Tazewell, and upon the Special application of Complainant said sale will be made upon a credit of twelve months, except 5 percent will be required down to be applied to the expenses of this suit, without the right of redemption or repurchase in defendant or anyone else, and a note with good personal security will be taken by the Master bearing interest from date. The Master will report his action to the next term of this Court.

April Term 1879.

Be it remembered that ~~this case came~~
~~out~~ at a Chancery Court begun and

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held for the County of Clatsop at the Court house in Seaside on the Second Monday of April 1879, the same being the 14 day of said month present and presiding the Hon. W. C. Smith Chancellor, the following proceedings were had to wit:

Alexander T. Greer	}	<u>Decree No. 2</u>
vs.		
P. A. Howard		

This cause came on to be further heard before the Hon. W. C. Smith, Chancellor on this the day of April 1879, upon the pleadings, proofs, former decrees and upon the report of the Master made to the present term, of the sale of land, "Filed Dec 21, 1878," which report being unexcepted to is in all things confirmed, and is in words and figures following, to wit:

Alexander T. Greer	}	Clerk and Master's report of sale of land to the April term, 1879.
vs.		
P. A. Howard		

The undersigned would respectfully report,

that in obedience to the decree pronounced in this cause at the last term of this Court directing the Clerk and Master to sell the land named in the pleadings and in said decree, after giving notice as directed by said decree (a copy of said notice being herewith filed marked "exhibit A" to this report) he offered said land and property for sale at public outcry, and sold the same at ~~public outcry~~ at the Court house door in Tazewell Term, on the 21st day of December 1878 to A. F. Greer the complainant at the price of Two Thousand Dollars, that being the highest and best bid for the same.

The land and property so sold is described as follows: All of a certain one undivided half interest of a certain tract of land lying in Claiborne County Tenn. and Lee County Va. and in the fourth civil district of Claiborne County, adjoining the lands of W. A. Patterson, Dr. Morrison and others. The Clerk and Master sold the undivided one half interest

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in that portion of said tract which lies in said Claiborne County, Tenn., Said sale was made upon a credit of twelve months except 5 per cent of the amount of the bid, bring the sum of \$100.00 which was required and paid down, and in bar of the equity of redemption. The complainant H. L. Greer being the purchaser and the party for whose benefit the land was sold, he was not required to execute any note for the purchase money but the net amount of his bid on said land is a credit on his decree in this case against the defendant to that extent.

Respectfully submitted

J. C. Rogers, Exam.
by B. A. Hume, Exam.

~~Endorsed:~~

Filed Dec 21, 1878. B. A. Hume Exam.

From which it appears to the Court that after complying with the requirements of the decree

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of the last term of this Court, as to notice &c. the Clerk and Master sold the land named in the pleadings and in the decree of the last term at the Court house door in Tazewell on the 20th day of Decr. 1878 to the Comptt. W. F. Greer, who has fully complied with the terms of sale.

It is therefore ordered adjudged and decreed that all the title both legal and equitable that the defendant P. A. Howard has in and to one undivided half of the following described tract of land, lying in Claiborne County Tenn. &c and the same is hereby divested out of him and the title to the same both legal and equitable is hereby vested in the purchaser W. F. Greer and his heirs and assigns forever, free from and in bar of the right of redemption or repurchase by the defendant P. A. Howard or his creditors, and a copy of this

deed properly certified and registered as required by law be a sufficient muniment of title to said purchaser, or he may have a deed from the Clerk and Master if he prefers it, upon paying his legal fees therefor. Said land so sold is described as follows: All of a certain one undivided half interest of a certain tract of land lying in Claiborne county Tenn and Lee county Va. and bounded as follows: Beginning at a Poplar tree (now down) one of the original corners of the 1155 acre tract nearly opposite flag hollow passing the mouth of flag hollow southwardly to the closing line of the John Jones 3000 acre grant and with said line Eastwardly to the North East corner of the Hugh Graham tract (now William H. Pattersons); thence north to the top of the Poor valley ridge, thence Eastwardly along the top

of said ridge to Robert Crockett's (now
Dr. Morrison's) line; and thence with the
original line of the John Jones 1100
acre tract to the beginning, contain-
ing by estimation 800 acres. It

247 It appearing to the Court that in this
case at the last term of this Court,
to wit, on the 16th day of October 1878,
the complainant H. F. Greer recovered
a decree against the defendant P.
H. Howard for the sum of \$10640.83
— debt which bears interest at the
rate of ten percent per annum,
and the sum of \$266.15 counsel fees
and the costs of this cause, that the
land above described is sold in
this case on the 21st day of Decr.
1878 for the sum of \$20000.00, that
the sale was made for the purpose
of satisfying said decree, that the
costs of this cause amounted to the
sum of \$62.65 which were paid
out of the purchase price of the
land by the purchaser to the

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Clerk and Master and that the complainant W. L. Grub has paid in taxes that were assessed on said land prior to the present year, the sum of \$280.95 which taxes and costs are the sum of \$343.60, the Court is therefore pleased to order and decree that the balance of said purchase price of said land after deducting costs and taxes of \$343.60 leaving as such balance the sum of \$1656.40 stand and be applied as a credit on the complainant's decree of the last term as of the date of the sale of said land, to wit, Decr. 21, 1878, and subject to these credits an execution is awarded for the remainder of said recovers in complainant favor.

State of Tennessee)

Clatsone County)

J. Asham G. Treabow
Clerk and Master of the

Chancery Court at Tayewell, Tenn.
do hereby certify, that the foregoing is
a full, true and perfect copy of the
record in the case in said Court
of H. L. Greer vs. P. A. Howard, down
to and including decree confirming
land sale as remains of record in my office.

Witness my hand and seal of said
Court this 18 day of December 1886.

Wm. H. Reabow, C. M.

Ct. M. fee \$5.50 paid by C. H. Boyer

A. L. Greer.
vs { Copy of Record.
P. A. Howard.

(A)

11. 5. 66

Virginia

In the Clerk's Office of the
Circuit Court for Lee County,
on Tuesday, 18th January 1887.

R. D. Flannery Sheriff & Amicus Petit
against
D. A. Howard, Jas. A. Greer et al. & Co. } De Chery

The object of this suit is to
foreclose a mortgage executed
by D. A. Howard to A. L. Greenwood,
on the land in the Bill & the
proceedings mentioned, and
to have said land sold to
satisfy debt mentioned in said
Bill; and it appearing from
an affidavit filed in this cause
that the defendants, D. A. Howard,
Jas. A. Greer, John W. Greer, John
B. Ewart, and Emma his wife,
Wm. F. Spinnerall, & Laura his wife,
Birdie Howard, & Annie Howard,
are non-residents of this
State: It is therefore ordered
that they appear herewithin
one month after due publication
of this order and do what may
be necessary to protect
their interest in this suit.

(J. B. H. L. & P. Q.)

A copy

Lester J. A. Hyatt & Co.

R. D. Thomas

vs ³/₃ Order Pub

J. H. Howard

I certify that
I delivered to the
Va Herald an
office copy of this
order for publication
and posted a like
copy thereof on the
Ct of Dor of Lee
County at the day
of February term 1887
of the Lee County Court
J. H. Syatt

The Commonwealth of Virginia,

To the Sheriff of LEE COUNTY--Greeting:

WE COMMAND YOU to summon

*P. H. Howard, James
A. Green, John W. Green, John B. Evans & Emma
his wife, Wm. F. Simmell, & Laura his wife
Birdie Howard & Anna Howard*

to appear at the Clerk's office of the Circuit Court of Lee County, at the Court House
on the first Monday in *February* next, being Rule Day, to answer a
Bill in Chancery exhibited in our Court against *them*, by *R. D.
H. L. Green Sheriff & Admin. of P. H. Green
deceased*

And have then and there this Writ. Witness, J. A. G. HYATT, Clerk of our said
Court, at the Court House, this *18th* day of *January* 188*7* in
the 1*1* year of the Commonwealth.

A Copy Teste:

J. A. G. Hyatt Clerk.

R. D. Flannery & Co
Attorneys

vs ³/₄ Spanish

J. A. Howard & Co

To February Rules 1887.

Not executed
the defendants
not being found
in my bailwick
January 19 1887

S. H. Ewing Deputy
To R. D. Flannery & Co

I Jeff L. Ruff, the editor and
proprietor, of The Virginia Herald,
a weekly news paper printed in
the town of Jonesville, in the
County of Lee, and State of
Virginia, do Certify that the
annexed Order of Publication
was duly published in the said
News paper, for four successive
weeks, from and after the 20
day of Jan in the year of our
Lord 1887. And that the
publishers fee of \$3.00 is
due and unpaid

Jeff Ruff

VIRGINIA—In the Clerk's office of the
Circuit Court for Lee county on the 18th
January, 1887.

R. D. Flanery, Sheriff, & Adm. &c Plff.
VS

P. A. Howard, James A. Greer et al Dett.
IN CHANCERY.

The object of this suit is to fore close
a mortgage executed by P. A. Howard to
A. L. Greer dec'd on the land in the Bill
& the proceeding mentioned, and to have
said land sold to satisfy debt mentioned
in said Bill; and it appearing from an affi-
davit filed in this case that the defendants
P. A. Howard Jas. A. Greer, John W.
Greer, John B. Ewan, and Emma his wife,
Wm. F. Simerall, & Laura his wife, Birdie
Avird, & Annie Avard are non residents
of this State: It is therefore ordered that
they appear here within one month after
due publication of this order and do what
may be necessary to protect their interest

R D ~~Flannery~~ Admocat
F B.
P A Howard et al,

Pub. fee 5⁰⁰